



# Journal of the Senate

State of Indiana

114th General Assembly

First Regular Session

Eighth Meeting Day

Wednesday Morning

January 19, 2005

The Senate convened at 10:05 a.m., with the President Pro Tempore of the Senate, Robert D. Garton, in the Chair.

Prayer was offered by Senator Marvin D. Riegsecker.

The Pledge of Allegiance to the Flag was led by Senator Riegsecker.

The Chair ordered the roll of the Senate to be called. Those present were:

Alting <input type="checkbox"/>	Long
Antich-Carr	Lubbers
Bowser	Lutz
Bray	Meeks
Breaux	Merritt
Broden	Miller
Clark	Mishler
Craycraft <input type="checkbox"/>	Mrvan
Dillon	Nugent
Drozda	Paul
Ford	Riegsecker
Gard	Rogers
Garton	Server
Harrison	Simpson
Heinold	Sipes
Hershman <input type="checkbox"/>	Skinner
Howard	Smith
Hume	Steele
Jackman <input type="checkbox"/>	Waltz <input type="checkbox"/>
Kenley	Waterman <input type="checkbox"/>
Kruse	Weatherwax <input type="checkbox"/>
Lanane	Wyss <input type="checkbox"/>
Landske	Young, M.
Lawson	Young, R. <input type="checkbox"/>
Lewis	Zakas

Roll Call 9: present 41; excused 9. [Note: A ☐ indicates those who were excused.] The Chair announced a quorum present. Pursuant to Senate Rule 5(d), no motion having been heard, the Journal of the previous day was considered read.

## SENATE MOTION

Madam President: I move that Hume be appointed to replace Senator Simpson on the Committee to wait upon the Chief Justice and to escort him to the Chambers of the House of Representatives to deliver his message to the General Assembly on January 19, 2005.

GARTON

Motion prevailed.

## REPORTS FROM COMMITTEES

### COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill 230, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 2, line 8, delete "and".

Page 2, line 9, delete "." and insert "; and

**(iv) submits the name and address of a neighborhood association contact person to the institute at least one (1) time each year."**

(Reference is to SB 230 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

LONG, Chair

Report adopted.

### COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill 195, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill do pass. Committee Vote: Yeas 9, Nays 0.

GARD, Chair

Report adopted.

### COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill 169, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 3, line 14, after "the" insert "**environmental quality service**".

Page 3, line 18, after "the" insert "**environmental quality service**".

Page 3, line 21, after "in the" insert "**environmental quality service**".

Page 3, line 21, delete "general assembly." and insert "**legislative council**".

(Reference is to SB 169 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

GARD, Chair

Report adopted.

## COMMITTEE REPORT

Madam President: The Senate Committee on Elections and Civic Affairs, to which was referred Senate Bill 179, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

LAWSON, Chair

Report adopted.

## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill 159, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

LONG, Chair

Report adopted.

## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill 164, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

LONG, Chair

Report adopted.

## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill 47, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).

(viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Cigarettes that are sold in violation of IC 24-3-5.2, cigarettes that a person attempts to sell in violation of IC 24-3-5.2, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.2.

(13) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

**(14) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.**

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 2. IC 35-43-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a)** A person who ~~with intent to defraud~~, **knowingly or intentionally**:

**(1)** makes or utters a written instrument in such a manner that it purports to have been made:

~~(1)~~ **(A)** by another person;

~~(2)~~ **(B)** at another time;

~~(3)~~ **(C)** with different provisions; or

~~(4)~~ **(D)** by authority of one who did not give authority; **or**

**(2) possesses more than one (1) written instrument knowing that the written instruments were made in a manner that they purport to have been made:**

**(A) by another person;**

**(B) at another time;**

**(C) with different provisions; or**

**(D) by authority of one who did not give authority;**

commits ~~forgeries~~ **counterfeiting**, a ~~Class C~~ **Class D** felony.

**(b)** A person who, with intent to defraud, makes, ~~or~~ utters, **or possesses** a written instrument in such a manner that it purports to have been made:

(1) by another person;

(2) at another time;

(3) with different provisions; or

(4) by authority of one who did not give authority;

commits forgery, a Class C felony.

(Reference is to SB 47 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

LONG, Chair

Report adopted.

#### COMMITTEE REPORT

Madam President: The committee appointed to act with a like committee of the House of Representatives to wait upon the Governor and to escort him to the Chambers of the House of Representatives to deliver his message to the General Assembly begs leave to report that it has performed the duties assigned to it.

MILLER, Chair

LONG

LANANE

ROGERS

Committee of the Senate

Report adopted.

#### MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed Engrossed House Bill 1029 and the same is herewith transmitted to the Senate for further action.

M. CAROLINE SPOTTS

Principal Clerk of the House

#### SENATE MOTION

Madam President: I move that Senator Lanane be added as coauthor of Senate Bill 77.

M. YOUNG

Motion prevailed.

## SENATE MOTION

Madam President: I move that Senator Antich-Carr be added as coauthor of Senate Bill 195.

KENLEY

Motion prevailed.

## SENATE MOTION

Madam President: I move that Senators Alting and Hershman be added as coauthors of Senate Bill 178.

DILLON

Motion prevailed.

## SENATE MOTION

Madam President: I move that Senator Steele be added as coauthor of Senate Bill 179.

DILLON

Motion prevailed.

## SENATE MOTION

Madam President: I move that the Senate do now recess until 10:30 a.m., at which time the Senate will reconvene in the House chambers for the purpose of attending a joint convention of the Senate and the House of Representatives to receive the report of the Chief Justice of the Supreme Court in compliance with Article 7, Section 3 of the Constitution of the State of Indiana, which requires the Chief Justice to prepare and "submit to the General Assembly regular reports on the condition of the courts and such other reports as may be requested" and that following adjournment of the joint convention, the Senate reconvene in the Senate Chamber upon the fall of the gavel.

GARTON

Motion prevailed.

10:19 a.m.

The Chair declared a recess until the fall of the gavel.

**Recess**

The Senate reconvened at 11:29 a.m., with Senator Garton in the Chair.

## SENATE MOTION

Madam President: I move we adjourn until 1:30 p.m., Thursday, January 20, 2005.

HARRISON

Motion prevailed.

The Senate adjourned at 11:30 a.m.

MARY C. MENDEL  
Secretary of the Senate

REBECCA S. SKILLMAN  
President of the Senate